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14

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/198,004	11/23/98	CARVER	E 116310.014

IM22/1108

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EXAMINER

ALEXANDER, L

ART UNIT	PAPER NUMBER
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1743

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DATE MAILED:

11/08/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.
09/198,004

Applicant(s)

Carver et al.

Examiner
Lyle A. Alexander

Group Art Unit
1743



☒ Responsive to communication(s) filed on Aug 28, 2000

☒ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) 1, 3-6, 31, and 33-44 is/are pending in the application.

Of the above, claim(s) _____ is/are withdrawn from consideration.

☒ Claim(s) 31, 33-39, and 41-44 is/are allowed.

☒ Claim(s) 1, 3-6, and 40 is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been
☐ received.

☐ received in Application No. (Series Code/Serial Number) _____.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____.

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☐ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

Claim Rejections - 35 USC § 102

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
2. Claims 1,3-6 and 40 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Tsuji et al. Surjaatmadja et al., Sainz et al.

See the appropriate paragraph of paper 14.

The cited prior art teaches methods and apparatus for analysis of reagent mixtures with a plurality of pumping means forming a plurality of sample streams.

Response to Arguments

3. Applicant's arguments filed 8/28/00 have been fully considered but they are not fully persuasive.

Applicants' state Tsuji fails to teach varying the flow rate of either the blood sample or the standard solution to provide various mixtures thereof. With respect to the apparatus claims 1,3-6 and 40, the method of intended use is of no patentable moment as long as the apparatus has the ability to be used in the claimed manner. The Office asserts Tsuji teaches a device capable of varying the relative flow rates.

Applicants state Surjaatmadja and Sainz fail to teach the claimed method of blood analysis. Concerning apparatus claims 1,3-6 and 40, the method of intended use is of no patentable moment as long as the apparatus has the ability to be used in the claimed manner.

Allowable Subject Matter

4. Claims 31,33-39 and 41-44 are allowed.

5. ***Conclusion***

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office

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action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication should be directed to Lyle A. Alexander at telephone number (703) 308-3893.



**LYLE A. ALEXANDER
PRIMARY EXAMINER**